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8
9 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against,

Case No. OT-2005-64-S

13 **EMILY VRKLJAN**
14 **470 North Coast Highway, Apartment H**
Laguna Beach, CA 92651

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

15 **Occupational Therapist**
16 **License No. OT 8489**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Heather Martin (Complainant) brings this Accusation and Petition to Revoke
22 Probation solely in her official capacity as the Executive Officer of the California Board of
23 Occupational Therapy, Department of Consumer Affairs.

24 2. On or about October 21, 2005, the California Board of Occupational Therapy issued
25 Occupational Therapist License Number OT 8489 to Emily Vrkljan (Respondent). The
26 Occupational Therapist License was in effect at all times relevant to the charges brought herein
27 and will expire on January 31, 2012, unless renewed.
28

3. In a disciplinary action entitled "In the Matter of Accusation Against Emily Vrkljan," Case No. OT-2005-64, the California Board of Occupational Therapy, issued a decision, effective July 24, 2009, in which Respondent's Occupational Therapist License was revoked. However, the revocation was stayed and Respondent's license was placed on probation for a period of four (4) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 2570.26 of the Code states:

- (a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, certificate, inactive license, inactive certificate, or limited permit.
- (b) As used in this chapter, “license” includes a license, certificate, limited permit, or any other authorization to engage in practice regulated by this chapter.
- (c) The proceedings under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part I of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein.

6. Section 2570.28 of the Code states:

The board may deny or discipline a licensee for any of the following:

- (a) Unprofessional conduct, including, but not limited to, the following:
-

- (c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter.

1 7. Section 2570.29 of the Code states:

2 In addition to other acts constituting unprofessional conduct within the meaning of
3 this chapter, it is unprofessional conduct for a person licensed under this chapter to
4 do any of the following:

5

6 (b) Use to an extent or in a manner dangerous or injurious to himself or herself, to
7 any other person, or to the public, or that impairs his or her ability to conduct with
8 safety to the public the practice authorized by his or her license, of any of the
9 following:

10

11 (3) Alcoholic beverages.

12 8. Section 4170 of the title 16, California Code of Regulations states:

13 A violation of any ethical standard of practice constitutes grounds for disciplinary
14 action. Every person who holds a license, certificate or limited permit issued by
15 the board shall comply with the following ethical standards of practice:

16

17 (b) Occupational therapy practitioners shall take reasonable precautions to avoid
18 imposing or inflicting harm upon the client or to his or her property.

19

20 (2) Occupational therapy practitioners shall avoid relationships or activities that
21 interfere with professional judgment and objectivity.

22 9. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 CHARGES AND ALLEGATIONS

27 10. At the end of March, 2010, Respondent was working at Flagship Healthcare Facility
28 as a fulltime occupational therapist. On March 25, 2010, Respondent called in sick in the
morning. About 1:00 p.m., however, Respondent showed up at work, disheveled in appearance
and smelling of alcohol. She was questioned by the facility administrator and was told she should
go home and rest.

11. On March 26, 2010, Respondent arrived at work, again appearing disheveled in dress
and manner. Respondent was directed to take a drug and alcohol test at the facility's health care

1 clinic. Respondent was told that she could lose her job if she did not submit to the alcohol and
2 drug test that the facility was requesting. Respondent repeatedly refused to do so. Respondent
3 then said she wanted to leave.

4 12. Respondent's employer tried to persuade Respondent not to drive, and instead offered
5 to have a cab take her home safely, and offered to arrange to have her car driven to her home.
6 Respondent was told that if she drove off in her car, her employer would call 911, i.e., the police.
7 Nevertheless, Respondent drove off in her car, and the police were called.

8
9 13. Shortly thereafter, the police stopped Respondent, given a field sobriety test and
10 was thereupon arrested. After she was arrested, Respondent's blood was drawn and tested for
11 the presence of alcohol, revealing that Respondent had a blood alcohol level of 0.30 percent.

12 FIRST CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct and Ethical Violation)

14 14. Respondent's license is subject to disciplinary action under section 2570.28(a) and
15 (c) of the Code, in conjunction with section 4170 of title 16, California Code of Regulations, in
16 that (i) Respondent came to work to perform her duties as a licensed occupational therapist while
17 impaired by alcohol or other substances and (ii) Respondent engaged in activities that interfere
18 with professional judgment and objectivity and failed take reasonable precautions to avoid
19 imposing or inflicting harm upon her clients or their property on March 25 and 26, 2010, during
20 the performance of her work responsibilities as set forth in paragraphs 10 to 13, above.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

23
24 15. Respondent's license is subject to disciplinary action under section 2570.29(b)(3) of
25 the Code in that Respondent used alcohol in a manner dangerous or injurious to herself, to any
26 other person, or to the public, or that impaired her ability to conduct with safety to the public the
27
28

practice authorized by her license, on or about March 25 and 26, 2010, as detailed in paragraphs 10 to 13, above.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Abstain from Alcohol)

16. At all times after the effective date of Respondent's probation, Condition 20 stated:

20. Abstain From Use of Alcohol. Respondent shall completely abstain from the use of alcoholic beverages during the period of probation.

17. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 20 in that Respondent on December 30, 2009, provided a urine sample that tested positive for Ethyl Glucuronide (EtG) indicating that Respondent has recently consumed alcohol. Furthermore, on March 26, 2010, Respondent was arrested and a blood sample was taken by the police and tested by the Orange County Crime Lab and found that Respondent had a blood alcohol level of 0.30 percent.

SECOND CAUSE TO REVOKE PROBATION

(Biological Fluid Testing)

18. At all times after the effective date of Respondent's probation, Condition 21 stated:

21. Submit Biological Fluid Samples. Respondent shall immediately submit to biological fluid testing, at Respondent's cost, upon request by the Board or its designee. There will be no confidentiality in the test results; positive test results will be immediately reported to the Board and the respondent's current employer.

19. Respondent's probation is subject to revocation because she failed to comply with Probation Condition 21 in that Respondent failed to submit to biological fluid testing as follows:

DATE	RESULT
December 29, 2009	No show.
January 20, 2010	No show.
January 25, 2010	No show.
February 4, 2010	No. show.
February 18, 2010	No show.


March 11, 2010	No show.
March 16, 2010	No show.
March 17, 2010	No show.
March 24, 2010	No show.
April 8, 2010	No show.
April 14, 2010	No show.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Occupational Therapy issue a decision:

1. Revoking the probation that was granted by the California Board of Occupational Therapy in Case No. OT-2005-64 and imposing the disciplinary order that was stayed thereby revoking Occupational Therapist License No. OT 8489 issued to Emily Vrkljan;
2. Revoking or suspending Occupational Therapist License No. OT 8489, issued to Emily Vrkljan;
3. Taking such other and further action as deemed necessary and proper.

DATED: 19 May 2010


 HEATHER MARTIN
 Executive Officer
 California Board of Occupational Therapy
 Department of Consumer Affairs
 State of California
 Complainant

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Exhibit A

Decision and Order

California Board of Occupational Therapy Case No. OT-2005-64-S

BEFORE THE
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

EMILY VRKLJAN
470 North Coast Hwy., Apt. H
Laguna Beach, CA 92651
Occupational Therapist License No. OT 8489

Respondent.

Case No. OT 2005-64

OAH No. 2009030837

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Occupational Therapy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on July 24, 2009.

It is so ORDERED June 24, 2009.


FOR THE CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 JAMES M. LEDAKIS

Supervising Deputy Attorney General

3 CARL W. SONNE, State Bar No. 116253

Deputy Attorney General

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6 San Diego, CA 92186-5266

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7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**
10 **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 EMILY VRKLJAN

470 North Coast Hwy., Apt. H

14 Laguna Beach, CA 92651

15 Occupational Therapist License No. OT 8489

Respondent.

Case No. OT 2005-64

OAH No. 2009030837

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
19 above-entitled proceedings that the following matters are true:

20 PARTIES

21 1. Heather Martin (Complainant) is the Executive Officer of the California
22 Board of Occupational Therapy. She brought this action solely in her official capacity and is
23 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
24 by Carl W. Sonne, Deputy Attorney General.

25 2. Respondent Emily Vrkljan (Respondent) is represented in this proceeding
26 by attorney Fredrick M. Ray, Esq., whose address is 770 The City Drive, Suite 8100
27 Orange, CA 92868-6927.

28 ///

1 3. On or about October 12, 2005, the California Board of Occupational
2 Therapy issued Occupational Therapist License No. OT 8489 to Emnily Vrkljan (Respondent).
3 Respondent's license will expire January 31, 2010, unless renewed.

4 JURISDICTION

5 4. Accusation No. OT 2005-64 was filed before the California Board of
6 Occupational Therapy (Board), Department of Consumer Affairs, and is currently pending
7 against Respondent. The Accusation and all other statutorily required documents were properly
8 served on Respondent on April 29, 2008. Respondent timely filed her Notice of Defense
9 contesting the Accusation. A copy of Accusation No. OT 2005-64 is attached as Exhibit A and
10 incorporated herein by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and
13 understands the charges and allegations in Accusation No. OT 2005-64. Respondent has also
14 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
15 Settlement and Disciplinary Order.

16 6. Respondent is fully aware of her legal rights in this matter, including the
17 right to a hearing on the charges and allegations in the Accusation; the right to confront and
18 cross-examine the witnesses against her; the right to present evidence and to testify on her own
19 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
20 production of documents; the right to reconsideration and court review of an adverse decision;
21 and all other rights accorded by the California Administrative Procedure Act and other
22 applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
24 each and every right set forth above.

25 CULPABILITY

26 8. Respondent admits the truth of each and every charge and allegation in
27 Accusation No. OT 2005-64.

28 9. Respondent agrees that her Occupational Therapist License is subject to

1 discipline and she agrees to be bound by the Board 's imposition of discipline as set forth in the
2 Disciplinary Order below.

3 CONTINGENCY

4 10. This stipulation shall be subject to approval by the Board. Respondent
5 understands and agrees that counsel for Complainant and the staff of the Board may
6 communicate directly with the Board regarding this stipulation and settlement, without notice to
7 or participation by Respondent or her counsel. By signing the stipulation, Respondent
8 understands and agrees that she may not withdraw her agreement or seek to rescind the
9 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
10 stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be
11 of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
12 between the parties, and the Board shall not be disqualified from further action by having
13 considered this matter.

14 11. The parties understand and agree that facsimile copies of this Stipulated
15 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
16 force and effect as the originals.

17 12. In consideration of the foregoing admissions and stipulations, the parties
18 agree that the Board may, without further notice or formal proceeding, issue and enter the
19 following Disciplinary Order:

20 DISCIPLINARY ORDER

21 IT IS HEREBY ORDERED that Occupational Therapist License OT 8489 issued
22 to Respondent EMILY VIRKLJAN is revoked. However, the revocation is stayed and
23 Respondent is placed on probation for four (4) years.

24 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws
25 and regulations governing the practice of occupational therapy in California. Respondent shall
26 submit, in writing, a full detailed account of any and all violations of the law to the Board within
27 five (5) days of occurrence.

28 2. **Compliance with Probation and Quarterly Reporting.** Respondent

1 shall fully comply with the terms and conditions of probation established by the Board and shall
2 cooperate with representatives of the Board in its monitoring and investigation of the
3 respondent's compliance with probation. Respondent, within ten (10) days of completion of the
4 quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance
5 form obtained from the Board.

6 3. **Personal Appearances.** Upon reasonable notice by the Board,
7 respondent shall report to and make personal appearances at times and locations as the Board
8 may direct.

9 4. **Notification of Address and Telephone Number Change(s).**
10 Respondent shall notify the Board, in writing, within five (5) days of a change of residence or
11 mailing address, of her new address and any change in work and/or home telephone numbers.

12 5. **Tolling for Out-of-State Practice, Residence or In-State Non-Practice.**
13 In the event Respondent should leave California to reside or to practice outside the State for
14 more than thirty (30) days, Respondent shall notify the Board or its designee in writing within
15 ten (10) days of the dates of departure and return. All provisions of probation, except cost
16 recovery, shall be held in abeyance until respondent resumes practice and/or resides in
17 California. All provisions of probation shall recommence on the effective date of resumption of
18 practice and/or residence in California.

19 6. **Notification to Employer(s).** When currently employed or applying for
20 employment in any capacity in any health care profession, Respondent shall notify her employer
21 of the probationary status of respondent's license. This notification to the current employer shall
22 occur no later than the effective date of the Decision. Respondent shall notify any prospective
23 health care employer of her probationary status with the Board prior to accepting such
24 employment. This notification shall be made by providing the employer or prospective
25 employer with a copy of the Board's Accusation and Stipulated Settlement and Disciplinary
26 Decision and Order.

27 Respondent shall cause each health care employer to submit quarterly reports to
28 the Board. The reports shall be on a form provided by the Board, shall include a performance

1 evaluation and such other information as may be required by the Board.

2 Respondent shall notify the Board, in writing, within five (5) days of any change
3 in employment status. Respondent shall notify the Board, in writing, within five (5) days if she
4 is terminated from any occupational therapy or health care related employment with a full
5 explanation of the circumstances surrounding the termination.

6 7. **Employment Requirements and Limitations.** During probation,
7 respondent shall work in her licensed capacity in the State of California. This practice shall
8 consist of no less than twelve (12) continuous months and of no less than twenty (20) hours per
9 week.

10 While on probation, respondent shall not work for a registry or in any private duty
11 position, except as approved, in writing, by the Board. Respondent shall work only on a
12 regularly assigned, identified, and pre-determined work site(s) and shall not work in a float
13 capacity except as approved, in writing, by the Board.

14 8. **Supervision Requirements.** Respondent shall obtain prior approval from
15 the Board, before commencing any employment, regarding the level of supervision provided to
16 the respondent while employed as an occupational therapist or occupational therapy assistant.

17 Respondent shall not function as a supervisor during the period of probation
18 except as approved, in writing, by the Board.

19 9. **Continuing Education Requirements.** Respondent shall complete
20 continuing education in the areas in Ethics, Clinical Reasoning, and Stress Management. Such
21 continuing education shall be completed within one (1) year of the effective date the Decision.

22 The continuing education course work shall be in addition to the professional
23 development activities required for license renewal. Respondent shall complete the required
24 continuing education course work, as follows: one course in Ethics for twelve hours (hours) of
25 credit, one course in Clinical Reasoning for two (2) hours of credit, and one course in Stress
26 Management for four (4) hours of credit.

27 Within thirty (30) days of the effective date of the Decision, Respondent shall
28 submit a written plan to comply with this requirement. The proposed plan shall include the name

1 or title of the course, a course description or syllabus, and identify the provider. A Board
2 representative shall approve such plan prior to enrollment in any course of study.

3 Failure to satisfactorily complete the required continuing education as scheduled
4 shall constitute a violation of probation. Respondent is responsible for all costs of such
5 continuing education. Upon successful completion the courses, Respondent shall send the
6 original certificates she receives for successful completion of the course work to the Board
7 within thirty (30) days of completion of each course. Respondent shall send the original
8 certificates to the Board by certified mail, return receipt requested.

9 10. **Maintenance of Valid License.** Respondent shall, at all times while on
10 probation, maintain an active current license with the Board, including any period during which
11 license is suspended or probation is tolled.

12 11. **Cost Recovery Requirements.** Respondent shall pay the Board
13 \$5,000.00 as and for the reasonable costs of the investigation and prosecution in this matter
14 pursuant to Business and Professions Code section 125.3. Respondent shall be permitted to pay
15 these costs in a payment plan approved by the Board, with the payments to be completed no later
16 than six months prior to the end of the probation term. Respondent shall make the check or
17 money order payable to the Board of Occupational Therapy and shall indicate on the check or
18 money order that it is the cost recovery payment for Case No. OT 2005-64. Any order for
19 payment of cost recovery shall remain in effect whether or not probation is tolled. Probation
20 shall not terminate until full payment has been made. Should any part of cost recovery not be
21 paid in accordance with the outlined payment schedule, Respondent shall be considered to be in
22 violation of probation. A period of non-practice by Respondent shall not relieve Respondent of
23 her obligation to reimburse the board for its costs

24 12. **Violation of Probation.** If respondent violates probation in any respect,
25 the Board, after giving respondent notice and opportunity to be heard, may revoke probation and
26 carry out the disciplinary order which was stayed. If an accusation or a petition to revoke
27 probation is filed against respondent during probation, the Board shall have continuing
28 jurisdiction until the matter is final, and the period of probation shall be extended until the matter

1 is final.

2 13. **Completion of Probation and Waiver of Petition to Modify or Seek**
3 **Early Termination of Probation.** Respondent waives any rights she may have to petition for
4 early termination of probation or petition for modification of the terms of probation contained
5 herein. Upon successful completion of probation, respondent's license will be fully restored.

6 18. **Chemical Dependency Support/Recovery Groups.** Within five (5) days
7 of the effective date of the Decision, respondent shall begin attendance at a chemical dependency
8 support group (e.g. Alcoholics Anonymous, Narcotics Anonymous). Verified documentation of
9 attendance shall be submitted by respondent with each quarterly report. Attendance in such
10 groups shall be a minimum of one (1) time per week for the first two (2) years of probation. In
11 the third and fourth year of probation the Board or its designee may consider reducing the
12 frequency of attendance based on respondent's efforts toward rehabilitation, compliance with
13 probation, and work performance evaluations. Respondent shall continue attendance in such a
14 group for the duration of probation.

15 19. **Abstain From Controlled Substances.** Respondent shall completely
16 abstain from the personal use or possession of controlled substances, as defined in the California
17 Uniform Controlled Substances Act, and dangerous drugs as defined in section 4021 and 4022 of
18 the Business and Professions Code, except when lawfully prescribed by a licensed practitioner
19 for a bona fide illness.

20 20. **Abstain From Use of Alcohol.** Respondent shall completely abstain from
21 the use of alcoholic beverages during the period of probation.


22 21. **Submit Biological Fluid Samples.** Respondent shall immediately submit
23 to biological fluid testing, at respondent's cost, upon request by the Board or its designee. There
24 will be no confidentiality in the test results; positive test results will be immediately reported to
25 the Board and the respondent's current employer.

26 24. **Suspension.** Respondent is suspended from the practice of occupational
27 therapy for fifteen (15) days beginning on the effective date of the Decision.

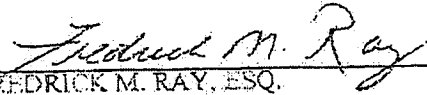
28 ///

ACCEPTANCE

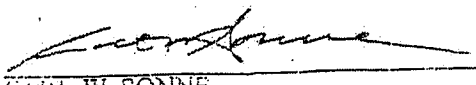
I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Fredrick M. Ray, Esq. I understand the stipulation and the effect it will have on my Occupational Therapist License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the California Board of Occupational Therapy.

DATED: 5-13-09
EMILY VRKLJAN
Respondent

I have read and fully discussed with Respondent Emily Vrkljan the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/13/09
FREDRICK M. RAY, ESQ.
Attorney for RespondentENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the California Board of Occupational Therapy of the Department of Consumer Affairs.

DATED: May 22, 2009EDMUND G. BROWN JR., Attorney General
of the State of CaliforniaJAMES M. LEDAKIS
Supervising Deputy Attorney General
CARL W. SONNE
Deputy Attorney General
Attorneys for Complainant

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8 Attorneys for Complainant

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10 **BEFORE THE**
BOARD OF OCCUPATIONAL THERAPY
OF THE DEPARTMENT OF CONSUMER AFFAIRS
11 **OF THE STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. OT 2005-64

13 EMILY VRKLJAN
470 North Coast Highway, Apartment H
14 Laguna Beach, California 92651
Occupational Therapist No. OT 8489

A C C U S A T I O N

15
16 Respondent.

17 Complainant alleges:

18 PARTIES

- 19 1. Heather Martin ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Occupational Therapy.
21 2. On or about October 12, 2005, the Board of Occupational Therapist issued
22 License Number OT 8489 to Emily Vrkljan ("Respondent"). This license will expire on January
23 31, 2010 unless renewed.

24 JURISDICTION

- 25 3. This Accusation is brought before the Board of Occupational Therapy
26 ("Board"), Department of Consumer Affairs, under the authority of the following laws. All
27 section references are to the Business and Professions Code ("Code") unless otherwise indicated.
28 4. Section 125.3 of the Code provides, in pertinent part, that the Board may

1 request the administrative law judge to direct a licensee found to have committed a violation or
2 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
3 and enforcement of the case.

4 5. Section 482 of the Code states:

5 Each board under the provisions of this code shall develop criteria to
6 evaluate the rehabilitation of a person when:

7 (a) Considering the denial of a license by the board under Section 480; or

8 (b) Considering suspension or revocation of a license under Section 490.
9 Each board shall take into account all competent evidence of rehabilitation
10 furnished by the applicant or licensee.

11 6. Section 490 of the Code states:

12 A board may suspend or revoke a license on the ground that the licensee
13 has been convicted of a crime, if the crime is substantially related to the
14 qualifications, functions, or duties of the business or profession for which the
15 license was issued. A conviction within the meaning of this section means a plea
16 or verdict of guilty or a conviction following a plea of nolo contendere. Any
17 action which a board is permitted to take following the establishment of a
18 conviction may be taken when the time for appeal has elapsed, or the judgment of
19 conviction has been affirmed on appeal, or when an order granting probation is
20 made suspending the imposition of sentence, irrespective of a subsequent order
21 under the provisions of Section 1203.4 of the Penal Code.

22 7. Section 493 of the Code states:

23 Notwithstanding any other provision of law, in a proceeding conducted by
24 a board within the department pursuant to law to deny an application for a license
25 or to suspend or revoke a license or otherwise take disciplinary action against a
26 person who holds a license, upon the ground that the applicant or the licensee has
27 been convicted of a crime substantially related to the qualifications, functions, and
28 duties of the licensee in question, the record of conviction of the crime shall be
conclusive evidence of the fact that the conviction occurred; but only of that fact,
and the board may inquire into the circumstances surrounding the commission of
the crime in order to fix the degree of discipline or to determine if the conviction
is substantially related to the qualifications, functions, and duties of the licensee in
question.

As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

8. Section 2570.28 of the Code states:

The board may deny or discipline a licensee for any of the
following:

(a) Unprofessional conduct, including, but not limited to, the
following:

1 (c) Violating or attempting to violate, directly or indirectly, or
2 assisting in or abetting the violation of, or conspiring to violate, any provision or
term of this chapter or any regulation adopted pursuant to this chapter.

3 (c) Conviction of a crime or of any offense substantially related to
4 the qualifications, functions, or duties of a licensee, in which event the record of
the conviction shall be conclusive evidence thereof.

5 9 Section 2570.29 of the Code states:

6 In addition to other acts constituting unprofessional conduct within the meaning
7 of this chapter, it is unprofessional conduct for a person licensed under this
chapter to do any of the following:

8
9 (b) Use to an extent or in a manner dangerous or injurious to himself or herself, to
10 any other person, or to the public, or that impairs his or her ability to conduct with
safety to the public the practice authorized by his or her license, of any of the
11 following:
....

12 (3) Alcoholic beverages.

13 (c) Be convicted of a criminal offense involving the prescription, consumption, or
14 self-administration of any of the substances described in subdivisions (a) and (b)
of this section, or the possession of, or falsification of a record pertaining to, the
15 substances described in subdivision (a) of this section, in which event the record
of the conviction is conclusive evidence thereof.

16 (d) Be committed or confined by a court of competent jurisdiction for intemperate
17 use of any of the substances described in subdivisions (a) and (b) of this section,
in which event the court order of commitment or confinement is prima facie
18 evidence of the commitment or confinement.

19 10. Section 4170 of the title 16, California Code of Regulations states:

20 A violation of any ethical standard of practice constitutes grounds for disciplinary
21 action. Every person who holds a license, certificate or limited permit issued by
the board shall comply with the following ethical standards of practice:

22
23 (b) Occupational therapy practitioners shall take reasonable precautions to avoid
imposing or inflicting harm upon the client or to his or her property.
24

25 (2) Occupational therapy practitioners shall avoid relationships or activities that
interfere with professional judgement and objectivity.

26 11. Section VII of the Disciplinary Guidelines adopted by the Board pursuant
27 to title 16, California Code of Regulations, section 4144, and sections 481 and 482 of the Code
28 states:

REHABILITATION CRITERIA

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

CHARGES AND ALLEGATIONS

12. On or about December 13, 2005, Respondent reported to work at Hoag Hospital, impaired from the consumption of alcohol the night before. Respondent admitted to staff at Hoag Hospital that she was impaired and her employment was subsequently terminated. Respondent left work and stopped at a restaurant where she ate and consumed alcoholic beverages. On her way home, Respondent was involved in an automobile accident and was arrested on the following charges: Vehicle Code section 23153(a) (driving under the influence:

1 alcohol / drugs: resulting in bodily injury), Vehicle Code section 23153(b) (driving with a blood
2 alcohol level of .08 or more causing bodily injury), and section 4060 of the Code (possession of a
3 controlled substance without a prescription).

4 13. On or about December 15, 2005, a felony complaint was filed against
5 Respondent in Orange County Superior Court, Harbor Justice Center - Newport Beach Facility,
6 styled as *The People of the State of California v. Emily Vrkljan*, Case No. 05H1F2217. As
7 amended on January 26, 2006, the complaint alleged violations of Vehicle Code sections
8 23153(a) and 23153(b), and section 4060 of the Code (possession of a controlled substance
9 without a prescription) ("DUI Case"). Enhancements were alleged in the DUI Case pursuant to
10 Penal Code section 12022.7(a) (great bodily injury), and within the meaning of Penal Code
11 sections 1192.7 and 667.5, in that Respondent personally inflicted great bodily harm on another
12 person.

13 14. On or about March 16, 2006, the charges in the DUI Case were amended
14 to add a fourth count for violation of California Vehicle Code section 23152(b) (DUI with blood
15 alcohol level of .08 percent or above). On that same day, Respondent pleaded guilty to the
16 fourth count, a misdemeanor, and the other counts were dismissed.

17 15. On or about October 10, 2006, Respondent reported for work at Lake
18 Forest Nursing knowing that she was impaired from the consumption of alcohol the night before
19 and the morning of October 10, 2006. Respondent was confronted at work due to her apparent
20 impaired state. Respondent was tested at the request of Lake Forest Nursing and the test came
21 back positive for alcohol. Respondent admitted to being impaired and was given the option to
22 resign or be terminated. Respondent resigned her position as an Occupational Therapist at Lake
23 Forest Nursing by letter dated October 23, 2006.

24 FIRST CAUSE FOR DISCIPLINE

25 (Conviction: Driving Under The Influence)

26 16. Respondent's license is subject to disciplinary action under sections 490
27 and 2570.28(e) of the Code in that on or about March 16, 2006, Respondent was convicted of an
28 offense substantially related to the qualifications, functions, and duties of a occupational therapist

1 as set forth in paragraphs 12 through 14 above.

2 SECOND CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct)

4 17. Respondent's license is subject to disciplinary action under sections 490
5 and 2570.28(a) of the Code in that on or about December 13, 2005, Respondent came to work to
6 perform her duties as a licensed occupational therapist while impaired by alcohol or other
7 substances as set forth in paragraph 12 above.

8 THIRD CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct)

10 18. Respondent's license is subject to disciplinary action under section
11 2570.28(a) of the Code in that on or about October 10, 2006, Respondent came to work to
12 perform her duties as a licensed occupational therapist while impaired by alcohol or other
13 substances as set forth in paragraph 15 above.

14 FOURTH CAUSE FOR DISCIPLINE

15 (Violation of Ethical Obligations)

16 19. Respondent's license is subject to disciplinary action under section
17 2570.28(c) of the Code, in conjunction with section 4170 of title 16, California Code of
18 Regulations, in that Respondent engaged in activities that interfere with professional judgement
19 and objectivity and failed take reasonable precautions to avoid imposing or inflicting harm upon
20 her clients or their property on October 10, 2006, during the performance of her work
21 responsibilities as set forth in paragraph 15 above.

22 FIFTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct)

24 20. Respondent's license is subject to disciplinary action under section
25 2570.29(b)(3) of the Code in that Respondent used alcohol in a manner dangerous or injurious to
26 herself, to any other person, or to the public, or that impaired her ability to conduct with safety to
27 the public the practice authorized by her license, on or about December 13, 2005, and, again, on
28 or about October 10, 2006, as detailed in paragraphs 12 through 15, above.

1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

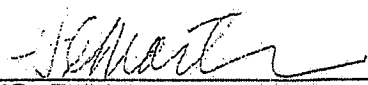
3 21. Respondent's license is subject to disciplinary action under section
4 2570.29(c) of the Code in that Respondent was convicted of a criminal offense involving the
5 prescription, consumption, or self-administration of alcohol as detailed in paragraphs 12 through
6 14, above.

7 PRAYER

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein
9 alleged, and that following the hearing, the Board of Occupational Therapy issue a decision:

- 10 1. Revoking or suspending Occupational Therapist Number OT 8489, issued
11 to Emily Vrkljan;
- 12 2. Ordering Emily Vrkljan to pay the Board of Occupational Therapy the
13 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
14 Professions Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.
- 16

17 DATED: 24 April 2008

18
19 
20 HEATHER MARTIN
21 Executive Officer
22 Board of Occupational Therapy
23 State of California
24 Complainant

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24 80226602.wpd
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